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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/506,603	02/18/2000	Richard Harold Boivie	YO999-374	8006

21254 7590 08/06/2004

MCGINN & GIBB, PLLC  
8321 OLD COURTHOUSE ROAD  
SUITE 200  
VIENNA, VA 22182-3817

EXAMINER

CARDONE, JASON D

ART UNIT PAPER NUMBER

2145

DATE MAILED: 08/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Advisory Action**

Application No.

09/506,603

Applicant(s)

BOIVIE ET AL.

Examiner

Jason D Cardone

Art Unit

2145

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

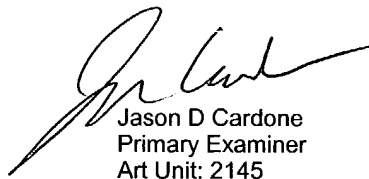
3. ☒ Applicant's reply has overcome the following rejection(s): 35 USC 112, 2nd.
4. ☒ Newly proposed or amended claim(s) 1-8 and 26 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 1-8 and 26.Claim(s) objected to: 22 and 25.Claim(s) rejected: 9-21, 23 and 24.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

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Jason D Cardone  
Primary Examiner  
Art Unit: 2145

Continuation of 5. does NOT place the application in condition for allowance because: as shown in the Final, the allowable subject matter is monitoring outbound communications bandwidth usage of each client traffic to determine service level for a SLA and controlling the inbound requests by each client to guarantee SLA by selectively dropping requests of the client. Independent claim 9 does not disclose controlling the inbound requests by each client to guarantee SLA by selectively dropping requests of the clients. Applicants' Attorney has argued that claim 9 has been amended to include the allowable subject matter. Examiner disagrees, as shown in the Final. The combination of Colby and Vaid disclose the controlling of outbound bandwidth usage by controlling incoming requests [Colby, col. 5, line 43 - col. 6, line 28] [Vaid, col. 6, lines 25-41, col. 7, lines 22-32, and col. 7, line 66 - col. 8, line 6].

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